IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 501

HUGHES TOOL COMPANY,

Petitioner,

against

TRANS WORLD AIRLINES, INC.

and

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT TRANS WORLD AIRLINES, INC.

The case involved herein, No. 501, is, in all respects, a companion case to that under review by this Court, as No. 443. It arises from a decision of the United States Court of Appeals for the Second Circuit (reported at 332 F.2d 602) which modified and, as modified, unanimously affirmed judgments of the United States District Court for the Southern District of New York (per Metzner,

D.J.) dismissing with prejudice five counter-claims asserted by Hughes Tool Company ("Toolco"), against respondent Trans World Airlines, Inc. ("TWA"), and respondents The Equitable Life Assurance Society of the United States, Metropolitan Life Insurance Company, Irving Trust Company, Dillon, Read & Co. Inc., Ben-Fleming Sessel, James F. Oates, Jr., Harry C. Hagerty and Charles C. Tillinghast, Jr. (collectively referred to as the "additional defendants"). These counterclaims were asserted by Toolco in the action brought against it and others by TWA which is the subject of review by this Court in No. 443.

Questions Presented

TWA believes that, in general, the statement of Questions Presented contained in the brief for the additional defendants accurately sets forth the questions on this review.

Counter-Statement of the Case

A full statement of the facts, the proceedings below, as well as of the legal principles which in TWA's opinion control both cases is contained in TWA's brief in No. 443, and we will not burden the Court by repetition here.

Although TWA was named as a counterclaim defendant by Toolco, it is clear that TWA is a defendant in name only. In essence, the counterclaims are really an attempt to establish a defense to TWA's complaint by allegations that TWA's injuries, which are admitted by Toolco's counterclaims in terms almost identical with those of the complaint, were caused not by Toolco but rather by the additional defendants.

Argument

As a technical counterclaim defendant in a situation which involves dismissal of the counterclaims because of a series of defaults by Toolco, TWA's position on this review is in most respects identical to that of the additional defendants. For this reason, TWA rests its case in this No. 501 on the brief it has submitted in No. 443, and in addition, insofar as the points and authorities relied on by the additional defendants in the "Argument" of their brief submitted herein are applicable to it, TWA adopts such "Argument" as its own.

There is one further argument, however, which is peculiarly available to TWA. Toolco's contention that the additional defendants had no independent right to examine Howard Hughes does not in any sense affect the clear right of TWA, under the orders of the District Court, to depose Hughes. Toolco, indeed, has never argued that TWA lacked the right under those orders to take Hughes' deposition. It is therefore, indisputable that TWA, at least, as plaintiff in the action, was fully entitled to a default judgment, with prejudice, on the counterclaims as a result of Toolco's deliberate refusal to obey the discovery orders of the District Court. The only question Toolco raises is whether the right of TWA to the default judgment extends to the additional defendants as well. Under these circumstances there is no question but that certainly TWA was entitled to the judgment dismissing the counterclaims with prejudice as to it.

Conclusion

For the reasons stated in TWA's brief in No. 443 as well as the reason uniquely available to TWA as set out herein, and for the further reasons set out in the brief of the additional defendants herein, respondent submits that the decision of the Court of Appeals as to TWA should be, in all respects, affirmed as to TWA.

Respectfully submitted,

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February 18, 1965.